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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERTO MENDOZA FLORES,

Defendant and Appellant.

A152523

(San Mateo County  
Super. Ct. No. 17SF003707A)

A jury convicted Gilberto Mendoza Flores of reckless burning of a structure (Pen. Code, 452, subd. (c))<sup>1</sup> and the trial court sentenced him to five years in prison. He appeals, contending the prosecution failed to satisfy the corpus delicti rule. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On a March 2017 evening, eight greenhouses and a shipping container in a greenhouse complex near Half Moon Bay burned down. Two days later, Flores was arrested and charged with arson (§ 451, subd. (c)).

At trial, the prosecution offered the following evidence:

The greenhouse complex consisted of between eight and ten greenhouses, and several shipping containers. The greenhouse complex owner converted one greenhouse into office space. The office was unlocked, with sections of fiberglass cut open. The property manager believed people were using the office for shelter at night. The property manager visited the site on the day of the fire between 5:00 p.m. and 5:30 p.m., before

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<sup>1</sup> Statutory references are to the Penal Code.

responding firefighters found the greenhouses to be in full blaze. He did not notice anything unusual, though he did not enter the greenhouses. He assumed the electricity running to the greenhouses had been turned off, but was not sure. Hundreds of feet from the greenhouse, in an adjacent greenhouse area, there was a tripped breaker.

After the fire, Flores was arrested and interviewed. Flores admitted going to the abandoned office space on the day of the fire, which he described as the room of a local transient. He admitted burning papers inside the office, but claimed he waited until the fire was extinguished before leaving. He did not know the greenhouses burned down and did not believe he was responsible.

David Hibdon, the fire captain for the state fire department, did a preliminary investigation into the origin and cause of the fire. He testified he could not rule out human agency as a cause of the fire “base[d] . . . on evidence [he] found at the scene” of the fire, which included “statements from people at the scene.”

Cal Fire Battalion Chief John Martinez testified as an expert regarding the cause of the fire. On the night of the fire, he spoke to firefighters and law enforcement officers, and surveyed the scene. Using burn indicators, he pinpointed the office space as the origin of the fire. Martinez initially determined the fire was caused by arson or by an electrical issue and excluded other possibilities. He ruled out the following possible causes: cooking, heating, spontaneous combustion, weather, appliances, children playing with fire, and smoking. Martinez ultimately concluded the fire was caused by arson; he excluded electrical issues as a cause after he was informed Flores admitted lighting papers and other items in the greenhouse. This information allowed Martinez to corroborate his determination regarding the fire’s origin. Martinez testified that even in the absence of Flores’s statement, he would have concluded the fire was “human caused,” even if he could not entirely rule out electrical as a possibility.

A jury convicted Flores of reckless burning of a structure. (§ 452, subd. (c).) The court sentenced Flores to five years in prison.

## DISCUSSION

Flores contends the evidence does not establish the corpus delicti of reckless burning of a structure, a lesser included offense of arson. (*People v. Atkins* (2001) 25 Cal.4th 76, 88.) We disagree.

“In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant.” (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168–1169.) “This rule is intended to ensure that one will not be falsely convicted, by his . . . untested words alone, of a crime that never happened.” (*Id.* at p. 1169.)

As relevant here, “[a]ll that is needed to establish the corpus delicti, in addition to the actual burning, is that the fire was intentional or of incendiary origin.” (*People v. Clagg* (1961) 197 Cal.App.2d 209, 212.) The evidence necessary to satisfy the corpus delicti rule “may be circumstantial, and need only be ‘a slight or prima facie showing’ permitting an inference of injury, loss, or harm from a criminal agency, after which the defendant’s statements may be considered to strengthen the case on all issues.” (*People v. Alvarez, supra*, 27 Cal.4th at p. 1181; *People v. Miranda* (2008) 161 Cal.App.4th 98, 108, fn. 9.) This is so because “[w]ere the rule otherwise it would, as a practical matter, in the absence of a plea of guilty, be necessary to strike arson from the list of prosecutable crimes. Incendiarism is rarely carried on in the presence of eyewitnesses.” (*People v. Andrews* (1963) 222 Cal.App.2d 242, 244.) Moreover, the prosecution need not “rule out all possible or imaginary causes of the fire[.]” (*People v. Andrews* (1965) 234 Cal.App.2d 69, 74.) “ ‘Rather, the foundation may be laid by the introduction of evidence which creates a reasonable inference that the [harm] could have been caused by a criminal agency [citation], even in the presence of an equally plausible noncriminal explanation of the event.’ ” (*People v. Ochoa* (1998) 19 Cal.4th 353, 405.)

Several cases have held circumstantial evidence satisfies the corpus delicti rule. (See *People v. Clagg, supra*, 197 Cal.App.2d at pp. 211–212 [defendant’s prior threats to

burn the house, his “presence in the house,” and “his unusual method of reporting the fire” established corpus delicti]; *People v. Andrews*, *supra*, 222 Cal.App.2d at pp. 245–246 [the corpus delicti rule satisfied based on circumstances such as proximity, time, and method of the fires]; *People v. Williams* (1971) 19 Cal.App.3d 339, 346 [“testimony of the custodian and the principal, as well as the presence of gasoline cans,” supported a finding that corpus delicti was proven].)

Expert opinion testimony may satisfy the corpus delicti rule. (*People v. Powers–Monachello* (2010) 189 Cal.App.4th 400, 412–413.) Here, the corpus delicti rule was satisfied by the prosecution’s expert, Martinez. On the night of the fire, after inspecting the scene and before learning of Flores’s statement, Martinez narrowed the fire’s causes to arson or an electrical issue. After learning of Flores’s statement, Martinez corroborated the fire’s origin and ultimately concluded the fire was incendiary. To prove a fire was of incendiary origin for purposes of satisfying the corpus delicti rule, only slight corroborating facts are required. (See *People v. Alvarez*, *supra*, 27 Cal.4th at p. 1181; *People v. Clagg*, *supra*, 197 Cal.App.2d at p. 212.) Martinez based his conclusion on his inspection of the scene, examination of physical evidence, conversations with various witnesses at the scene, and Flores’s statement. Additionally, Martinez testified that even in the absence of Flores’s statement, he would have concluded the fire was “human caused,” even if he could not entirely rule out electrical as a possibility. Contrary to Flores’s claim, “there was no requirement that the whole gamut of speculative possibility as to the cause of the fires be run, and then each, in turn, be ruled out.” (*People v. Andrews*, *supra*, 234 Cal.App.2d at p. 76.)

Here, jurors were properly instructed with CALCRIM No. 359 on the requirement of proof of the corpus delicti rule, and with CALCRIM No. 332 on expert witness testimony. If the jurors “believed the arson investigator’s testimony, the corpus delicti was established.” (*People v. Nichols* (1970) 3 Cal.3d 150, 156, fn. 1 [“arson investigator’s uncontradicted testimony established beyond any doubt that a fire occurred and that it had an incendiary origin”]), disapproved on another point as stated in *People v. Clark* (1992) 10 Cal.App.4th 1259, 1265; see also *People v. Nance* (1972) 25 Cal.App.3d

925 [the corpus delicti rule established based on testimony of an arson investigator that the fire was of incendiary origin].)

#### DISPOSITION

The judgment is affirmed.

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Jones, P.J.

WE CONCUR:

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Simons, J.

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Needham, J.

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